SUPREME COURT, U. S.
MAR 5 1971
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NO. 6553

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

70-5064

RUTH J. JEFFERSON, ET AL.,
Appellants

v.

BURTON G. HACKNEY, ET AL.,
Appellees

MOTION TO AFFIRM

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RUTH J. JEFFERSON, ET AL.,
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MOTION TO AFFIRM

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Appellees, Burton G. Hackney, Commissioner of the Texas State Department of Public Welfare, Will Bond, Chairman of the Texas State Board of Public Welfare, W. Kendall Baker, Vice-Chairman of the Texas State Board of Public Welfare, Louis Sarazan, Secretary of the Texas State Board of Public Welfare, and Rosalind Giles, Director of Field Staff, Dallas Regional Office of the Texas State Department of Public Welfare, move that the judgment entered by the court below be affirmed on the ground that the questions are so unsubstantial as not to warrant further argument.

STATEMENT OF THE CASE

This action is an appeal by the Petitioners, Ruth J. Jefferson, Emma Gibson and Jose Apolinar Vasquez,

from the judgment entered by the court below on the 4th day of August, 1970, attached hereto as Appendix "A," in a class action commenced by the Appellants against the Appellees, officials of the Texas Department of Public Welfare, wherein the Appellants sought: (1) a declaratory judgment holding invalid certain regulations of the Texas State Department of Public Welfare which reduce AFDC grants: (2) an injunction to restrain the implementation of regulations of the Texas State Department of Public Welfare which restrict the amount of assistance for AFDC recipients to a percentage of unmet budgetary need which is less than that granted to recipients in the other categories; and (3) an injunction prohibiting payments of assistance less than the unmet budgetary needs.

The Appellants are recipients of the Aid to Families with Dependent Children Program (AFDC) administered by the State of Texas through the Texas State Department of Public Welfare pursuant to Article 695c, Vernon's Civil Statutes. The AFDC Program is one of several similar programs for needy persons in the State of Texas which is operated on a cooperative basis with the Federal Government pursuant to the Social Security Act and specifically 42 U.S.C. §601, et seq.

The court below entered judgment in the proceeding on the 1st day of July, 1969, and thereafter on the 7th day of August, 1969, amended Paragraph V of such judgment. See *Jefferson, et al. v. Hackney, et al.*, 304 F.Supp. 1332 (1969). Thereafter, on the 4th day of May, 1970, pursuant to an appeal of the foregoing judgment to the United States Supreme Court, the United States Supreme Court in *Jefferson, et al. v. Hackney, et al.*, No. 1345 Misc., October Term 1969,

vacated and remanded the judgment so that it could be conformed to the United States Supreme Court's decision in *Rosado, et al. v. Wyman, et al.,* 397 U.S. 397 (1970).

On the 4th day of August, 1970, the court below entered its judgment, and from this judgment the Appellants have once again appealed.

OPINION BELOW

The opinion of the United States District Court for the Northern District of Texas, Dallas Division, rendered on the 1st day of July, 1969, is reported as *Jefferson, et al. v. Hackney, et al.,* 304 F.Supp. 1332 (1969). The judgment entered by the court below on the 1st day of July, 1969, is attached as Appendix "B." The amendment to such judgment entered on the 7th day of August, 1969, by the court below, is attached as Appendix "C."

The judgment entered by the court below on the 4th day of August, 1970, pursuant to the remand and instructions by this Court, is attached hereto as Appendix "A."

ARGUMENT

The Appellants in their jurisdictional statement have raised two questions for consideration by this Court. In their initial question, the Appellants are complaining that the judgment entered by the court below on the 4th day of August, 1970, conflicts with 42 U.S.C. §602(a)(23) and the decision of this Court in *Rosado v. Wyman,* 397 U.S. 397 (1970). In addition, the Appellants also challenge, as being in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution, the fact that the Legislature of the State of Texas has seen fit to appropriate less funds, on a per capita basis, for the

operation of the AFDC Program than the per capita funds available in the other categories of welfare assistance—Old Age Assistance Program (OAA), Aid to the Blind Program (AB), and Aid to the Permanently and Totally Disabled Program (APTD).

The Appellees will initially direct their comments to the contentions of Appellants that the judgment entered by the court below does not comply with 42 U.S.C. §602(a)(23) and the decision of this Court in *Rosado v. Wyman*, *supra*.

The Appellants instigated the instant proceeding in an effort to stop the Texas State Department of Public Welfare from implementing certain regulations which would have reduced all AFDC assistance grants by a certain percentage. The action by the Texas State Department of Public Welfare in reducing all AFDC benefits by an across-the-board percentage reduction was necessitated by the rapidly diminishing funds available under current legislative appropriations to meet the enormous increase in recipients of AFDC benefits. The percentage reduction was made by the Texas State Department of Public Welfare to prevent a complete cessation of AFDC benefits to recipients prior to the end of the State's fiscal year and the availability of additional funds.

The court below found that the new regulations of the Appellees (Executive Letter E-430 and Executive Letter E-434) raised the recognized standard of need for AFDC recipients by 11% to reflect the rise in the cost of living as required by 42 U.S.C. §602(a)(23); maximums on AFDC payments were removed; but that because the State of Texas was unable to meet more than 50% of such recognized needs the AFDC benefits would be ratably reduced by such amount. The

court below was of the opinion that 42 U.S.C. §602(a)(23) could not be complied with by the State of Texas by merely increasing the recognized need without actually paying such increase, and therefore the court below held such regulations invalid because they did not actually result in a cost of living increase in grants to AFDC recipients. As the court below stated in its opinion:

> ". . . We believe instead that Congress desired to increase the size of grants actually reaching AFDC recipients so as to minimize the effect of the rise in the cost of living . . ." (Jefferson v. Hackney, supra).

Subsequent to the decision of the court below, this Court decided the case of *Rosado v. Wyman, supra,* and on May 4, 1970, in No. 1345 Misc., October Term 1969, *Jefferson, et al. v. Hackney, et al.,* vacated the judgment of the court below and remanded the case to the court below for further consideration in light of *Rosado v. Wyman, supra.*

Pursuant to the instructions of this Court, the court below on August 4, 1970, entered its judgment which is identical to its prior judgment in all respects other than that the court found that: (1) the Appellees had adjusted the recognized needs of AFDC recipients to reflect changes in the living costs and that such action was in compliance with Section 402(a)(23) of the Social Security Act; (2) that the Texas regulation or statewide plan (E-434), which allowed the Appellees to pay a percentage of the recognized needs of AFDC recipients, was not in conflict with the requirements established by Congressional Amendment 42 U.S.C. §602(a)(23) and was in conformity with the decision of this Court in *Rosado v. Wyman, supra;* and (3) the injunctive relief sought was denied.

At this point in the proceedings the Appellants for the first time raised objections to the manner in which the Appellees were applying the percentage control factor or percentage reduction system. This was done by the Appellants in a Motion to Amend the Judgment entered by the court below on August 4, 1970.

The Appellees submit that the Appellants should not be allowed at this stage of this long and involved proceeding to raise an issue not heretofore before the court and certaintly not contained in any of the pleadings or relief sought by the Appellants. The Appellants contentions are nothing more than another attempt to salvage a lost cause by changing horses in midstream and making one last try.

In addition, the Appellees submit that the Appellants by these different contentions are merely attempting to reopen for further argument the decision already rendered by this Court in *Rosado v. Wyman, supra,* and if the contentions of the Appellants are to be sustained it would require this Court to reverse its opinion and holding in *Rosado v. Wyman, supra,* or would at best render such decision a nullity.

While this Court dealt with a large number of questions in *Rosado v. Wyman, supra,* the Appellees submit that the Court clearly answered the question of whether a state could pay less than the full recognized need of an AFDC recipient. This Court in *Rosado v. Wyman, supra,* stated that:

> "There are two basic factors that enter into the determination of what AFDC benefits will be paid. *First, it is necessary to establish a 'standard of need,' a yardstick for measuring who is eligible for public assistance. Second, it must be decided how much assistance will be given, that is what 'level of benefits' will be paid.* On both scores

Congress has always left to the States a great deal of discretion. King v. Smith, 392 U.S., at 318. Thus, some States include in their 'standard of need' items which others do not take into account. *Diversity also exists with respect to the level of benefits in fact paid.* Some States impose so-called dollar maximums on the amount of public assistance payable to any one individual or family. Such maximums establish the upper limit irrespective of how far short the limitation may fall of the theoretical standard of need. *Other States curtail the payments of benefits by a system of 'ratable reductions' whereby all recipients will receive a fixed percentage of the standard of need.* It is, of course, possible to pay 100% of need as defined. New York, in fact, purports to do so." (Emphasis added.)

This Court further stated in its opinion that:

"Reverting to the language of §402 we find two separate mandates: first, the States must re-evaluate the component factors that comprise their need equation; and, second, any 'maximums' must be adjusted.

"We think two broad purposes may be ascribed to §402: First to require States to face up realistically to the magnitude of the public assistance requirement and lay bare the extent to which their programs fall short of fulfilling actual need; second, to prod the States to apportion their payments on a more equitable basis. *Consistent with this interpretation of §402, a State may, after recomputing its standard of need, pare down payments to accommodate budgetary realities by reducing the percent of benefits paid or switching to a percent reduction system, but it may not obscure the actual standard of need.*

"The Congressional purpose we discern does not render §402 a meaningless exercise in 'bookkeeping.' Congress, sometimes, legislates by innuendo,

making declarations of policy and indicating a preference while requiring measures which, though falling short of legislating its goals, serve as a nudge in the preferred directions. In §402 Congress has spoken in favor of increases in AFDC payments. While Congress rejected the mandatory adjustment provision in the administration bill, it embodied in legislation the cost-of-living exercise which has both practical and political consequences.

"It has the effect of requiring the States to recognize and accept the responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and placing them among those eligible for the care and training provisions. Secondly, *while it leaves the States free to effect downward adjustments in the level of benefits paid, it accomplishes within the framework the goal, however modest, of forcing a State to accept the political consequence of such a cutback and bringing to light the true extent to which actual assistance falls short of the minimum acceptable.* Lastly, by imposing on those States that desire to maintain 'maximums' the requirement of an appropriate adjustment, Congress has introduced an incentive to abandon a flat 'maximum' system, thereby encouraging those States desirous of containing their welfare budget to shift to a percentage system which will more equitably apportion those funds in fact allocated for welfare and also more accurately reflect the real measure of public assistance being given." (Emphasis added.)

The foregoing statements by this Court clearly indicate that while the states must adjust their recognized need in connection with AFDC payments to reflect cost-of-living increases, that the state is free to decide what percentage of this adjusted recognized need it will pay the recipient.

There is no dispute in this case or in the record before this Court that Texas has adjusted the recognized need in connection with AFDC payments to reflect cost-of-living increases, and that the regulations under attack by the Appellants (E-434) were nothing more than the State of Texas saying that it would pay a certain percentage of such adjusted recognized need, consistent with available funds.

At no place in the decision by this Court in *Rosado v. Wyman, supra,* did the Court require that the percentage control factor or percentage reduction factor be applied to the unmet needs of the recipients rather than the recognized needs of the recipients. Yet the Appellants are trying by this new approach to completely nullify the decision in *Rosado v. Wyman* by a scheme which would make the principles set forth by the Court apply in a manner which would make them meaningless. This Court in *Rosado v. Wyman,* as well as *King v. Smith,* 392 U.S. 309, 318 (1968), recognized that:

> "There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds its devotes to the program." (*King v. Smith, supra*)

However, the theory that Appellants are now raising for the first time deals with determining eligibility for AFDC benefits and would deny to the states the right to determine the level of benefits it would allocate to AFDC recipients because it would in actuality and practice prohibit the result to be obtained by use of the percentage control or reduction factor which this Court has heretofore held to be permissible.

Appellees submit that the Appellants' new theory is completely lacking in merit and would be in direct conflict with the previous interpretation of 42 U.S.C. §603(a)(23) by this Court in *Rosado v. Wyman.*

The Appellants' second question raised for this Court's consideration is one which was adversely decided by the court below in both its initial judgment and the one now before this Court. Basically the Appellants are making the contention that there has been a violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States because the Legislature of the State of Texas has not allocated the funds made available to pay welfare benefits in Texas on an equal basis between the various categories of welfare recipients.

The Constitution of the State of Texas in Section 51-a of Article III allows the Legislature to appropriate funds for the State to participate in the OAA, AB, APTD and AFDC Programs, but the extent of such participation is presently limited to $80,000,000.00 and was limited to $60,000,000.00 at the time of the trial of this case. The Legislature of the State allocates, in its appropriations bill, specific sums which are authorized to be expended in grants to recipients in each of the various categories of welfare assistance. At the time of this suit such appropriations allowed payments in the OAA Program of approximately 100% of recognized need; 95% of recognized need in the AB and APTD Programs; and 50% in the AFDC Program. Subsequent appropriations have increased the percentage of recognized need which may be met in the AFDC Program.

The Appellants are contending that such allocations of moneys by the Legislature of the State of Texas

must be made in such amounts that the percentage of the recognized need which is paid to the recipient is the same in all programs or categories of welfare assistance. Appellants would have this Court hold that the Legislature of the State of Texas must cut the allocations of funds to the OAA, AB and APTD Programs and divert it to the AFDC Program, and thereby balance the percentage of recognized need which can be met as to all categories.

The Appellants contend that the equal protection clause of the Fourteenth Amendment to the Constitution of the United States requires this result, and attempt to fortify this position by the allegation that the lesser allocation of funds per capita to the AFDC Program was racially motivated. However, this position is completely lacking in merit, was refuted by the court below, and finds no support in the record before this Court.

The court below based its decision that the allocation of funds by the Legislature of the State of Texas between the various categories of welfare assistance was not racially motivated upon numerous stipulations of fact agreed upon by the Appellants and Appellees. The Appellees in rebuttal of Appellants' racial allegation, would merely refer this Court to the opinion of the court below and the stipulations referred to therein which show the complete lack of merit in Appellants' position.

As to the Appellant's argument that the State of Texas must treat all of the welfare categories, OAA, AB, APTD and AFDC, the same in the allocation of funds, this issue has been laid to rest adversely to Appellants' theory by such decisions as *Morey v. Doud*, 354 U.S. 457 (1957); *King v. Smith*, 392 U.S. 309

(1968); *McDonald v. Board of Election Commissioners of Chicago,* 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969); and *Rosado v. Wyman,* 397 U.S. 397 (1970). The Appellants' Fourteenth Amendment argument represents nothing more than a feeble effort to raise some form of constitutional issue before this Court and upon issues previously decided contrary to Appellants' time worn theory. Issues as to the proper allocation of state funds is a political question and not a judicial question because there are no judicially manageable standards to determine what form of welfare financing by the State would be most equitable. *Baker v. Carr,* 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962); *Powell v. McCormack,* 395 U.S. 486, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969); *McInnis v. Shapiro,* 293 F.Supp. 327 (1969), aff'd Sub Nom *McInnis v. Ogilvie,* 394 U.S. 322, 89 S.Ct. 1197, 22 L.Ed.2d 308 (1969); *LeBeauf v. State Board of Education,* 244 F.Supp. 256 (1965).

In view of the foregoing authorities, the Fourteenth Amendment argument of Appellants is unsupported by the law or the facts and is lacking in merit.

CONCLUSION

The Appellees respectfully submit that the Appellants have failed to raise any substantial federal question which has not already been decided adversely to Appellants' position, and this appeal represents merely an effort to once again argue issues already settled. Consequently, the Appellees submit that the judgment of the United States District Court for the Northern District of Texas, Dallas Division, entered on August 4, 1970, should be affirmed.

Respectfully submitted,

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SERVICE

I, Pat Bailey, one of the attorneys for the Appellees and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 3rd day of March, 1971, I served a copy of the foregoing Motion to Affirm on the Appellants by depositing a copy in the United States Mail, postage prepaid, and addressed to the attorneys of record for Appellants as follows: Steven J. Cole and Nancy Duff Levy, Center on Social Welfare Policy and Law, 401 West 117th Street, New York, New York 10027; Carl Rachlin, Hunter College, New York, New York 10021; Edward V. Sparer, University of Pennsylvania School of Law, 3400 Chestnut Street, Philadelphia, Pennsylvania 19104; and Ed J. Polk, Dallas Legal Service Project, 301 N. Market Street, Dallas, Texas 75202.

Pat Bailey

PAT BAILEY

APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NO. 3-3012-B

RUTH J. JEFFERSON, ET AL.

v.

BURTON G. HACKNEY, ET AL.

CIVIL ACTION NO. 3-3126-B

MARIA T. DAVILA, ET AL.

v.

BURTON G. HACKNEY, ET AL.

JUDGMENT

This action came on for hearing on Defendants' motion to dismiss Ruth Jefferson and on the merits before a three-judge court composed of Irving L. Goldberg, Circuit Judge, Sarah T. Hughes and W. M. Taylor, Jr., District Judges. That on the 1st day of July, 1969, the Court entered a judgment in the above styled and numbered cause, and thereafter on the 7th day of August, 1969, amended Paragraph V of such judgment. That thereafter, on the 4th day of May, 1970, pursuant to an appeal of the foregoing judgment to the United States Supreme Court, the United States Supreme Court vacated and remanded the judgment in this case so that it could be conformed to the United States Supreme Court's decision in Rosado, et al. v. Wyman, et al., decided on the 6th day of April, 1970, in Cause No. 540, October Term, 1969.

The case having been heard on the merits and upon consideration of the briefs, the stipulations filed therein, the argument of counsel and the decision by the

United States Supreme Court in the instant proceeding, as well as Rosado, et al. v. Wyman, et al., decided April 6, 1970, it is ORDERED, ADJUDGED and DECREED:

1. That the judgment heretofore entered by this Court on the 1st day of July, 1969, and amended thereafter on the 7th day of August, 1969, is hereby vacated and set aside, and that this judgment be entered in lieu thereof.

2. Defendants' motion to dismiss Ruth Jefferson as a party Plaintiff be and is hereby overruled and Ruth Jefferson is continued as a party Plaintiff.

3. The programs established by the Social Security Act and providing for (a) Old Age Assistance (OAA), (b) Aid to the Blind (AB), (c) Aid to the Permanently and Totally Disabled (APTD), and (d) Aid to Families with Dependent Children (AFDC) each stand alone and are not one program based solely on need. The payment by Texas of a lesser percentage of unmet budgetary needs to recipients of AFDC than to recipients of the other three programs is not violative of the Equal Protection Clause of the 14th Amendment.

4. The payment by Texas of a lesser percentage of unmet needs to the recipients of the AFDC than to the recipients of other welfare programs is not the result of racial or ethnic prejudice and is not violative of the federal Civil Rights Act or the Equal Protection Clause of the 14th Amendment.

5. The payment of less than 100% of actual need to recipients of AFDC is not violative of the Equal Protection Clause of the 14th Amendment and is not the result of racial or ethnic discrimination.

6. The Defendants herein have adjusted the recog-

nized needs of recipients of the AFDC program administered by the State of Texas to reflect changes in the living costs since such amounts were established. That such action on the part of the Defendants is in compliance with Section 402(a) (23) of the Social Security Act, 42 U.S.C.A. §402(a)(23).

7. The Texas state-wide plan known as E-434, effective May 1, 1969, which allows the Defendants to pay a percentage of the recognized needs of AFDC recipients is not in conflict with the requirements established by the Congressional Amendment 42 U.S.C.A. 402(a)(23) and is in conformity with the decision of the United States Supreme Court in Rosado, et al. v. Wyman, et al., decided on the 6th day of April, 1970.

8. The injunctive relief sought by the Plaintiffs is hereby denied.

Dated this 4th day of August, 1970.

IRVING L. GOLDBERG
Circuit Judge

SARAH T. HUGHES
District Judge

W. M. TAYLOR, JR.
District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

CIVIL ACTION 3-3012-B

RUTH J. JEFFERSON, ET. AL.

v.

BURTON G. HACKNEY, ET AL.

CIVIL ACTION 3-3126-B

MARIA T. DAVILA, ET AL.

v.

BURTON G. HACKNEY, ET AL.

JUDGMENT

This action came on for hearing on Defendant's motion to dismiss Ruth Jefferson and on the merits before a three-judge court composed of Irving L. Goldberg, Circuit Judge, Sarah T. Hughes and W. M. Taylor, Jr., District Judges.

After considering the motion to dismiss Ruth Jefferson the Court finds that at the time this case was filed on February 12, 1969 Ruth Jefferson was a recipient of the AFDC benefits and was at that time a proper party plaintiff and representative of the class of individuals receiving AFDC benefits; the Court further finds that Ruth Jefferson has not been removed from the AFDC rolls and is therefore a proper party plaintiff and is representative of the class of individuals receiving AFDC benefits.

It is therefore ORDERED, ADJUDGED and DECREED that Defendant's motion to dismiss Ruth Jef-

ferson as a party plaintiff be and is hereby overruled and Ruth Jefferson is continued as a party plaintiff.

The case having been heard on the merits and upon consideration of the briefs, the stipulations filed herein and the argument of counsel IT IS ORDERED, ADJUDGED and DECREED:

1. The programs established by the Social Security Act and providing for (a) Old Age Assistance (OAA), (b) Aid to the Blind (AB), (c) Aid to the Permanently and Totally Disabled (APTD), and (d) Aid to Families with Dependent Children (AFDC) each stand alone and are not one program based solely on need. The payment by Texas of a lesser percentage of unmet budgetary needs to recipients of AFDC than to recipients of the other three programs is not violative of the Equal Protection Clause of the 14th Amendment.

2. The payment by Texas of a lesser percentage of unmet needs to the recipients of the AFDC than to the recipients of other welfare programs is not the result of racial or ethnic prejudice and is not violative of the federal Civil Rights Act or the Equal Protection Clause of the 14th Amendment.

3. The payment of less than 100% of actual need to recipients of AFDC is not violative of the Equal Protection Clause of the 14th Amendment and is not the result of racial or ethnic discrimination.

4. The Texas state-wide plan known as E-430 and E-434 effective May 1, 1969 violates the requirements established by the Congressional Amendment 42 U.S.C.A. 402 (a) (23) to the AFDC program and is null and void.

5. Defendants are permanently enjoined from en-

forcing the Texas plan E-430 and E-434 providing for payments to recipients of AFDC and from receiving funds from the federal government until such time as a plan is formulated which carries out the provisions of 42 U.S.C.A. 402(a)(23).

It is further ORDERED, ADJUDGED and DECREED that the injunction herein granted is stayed for 60 days from date hereof in order to give the Texas Legislature an opportunity to implement a plan which will conform to the requirements of 42 U.S.C.A. 402(a)(23).

In due time an opinion will be handed down.

Dated this 1st day of July, 1969.

IRVING L. GOLDBERG
Circuit Judge

SARAH T. HUGHES
District Judge

W. M. TAYLOR, JR.
District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION 3-3012-B
RUTH J. JEFFERSON, ET. AL.
v.
BURTON G. HACKNEY, ET AL.

CIVIL ACTION 3-3126-B
MARIA T. DAVILA, ET AL.
v.
BURTON G. HACKNEY, ET AL.

ORDER

On the 7th day of August, 1969, came on for hearing the motion of the Plaintiffs to amend paragraph 5 of the judgment entered in this case on July 1, 1969.

The Plaintiffs and Defendants both appeared by counsel and after consideration of the briefs and argument of counsel it is the opinion of the Court that paragraph 5 should be amended so as to read as follows:

5. Defendants are permanently enjoined from enforcing the Texas Plan E-430 and E-434 providing for payments to recipients of AFDC and are directed, so long as the State has not withdrawn from the program, to formulate and implement a plan which carries out the provisions of 42 U.S.C.A. 402(a)(23).

IT IS SO ORDERED.

IRVING L. GOLDBERG
Circuit Judge

SARAH T. HUGHES
District Judge

W. M. TAYLOR, JR.
District Judge